THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION No. 3780 OF 2005

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Dt: 14.09.2005

Between:

V.Ramachandra Rao, S/o.Chalamaiah

Occ: Retd.Lecturer in Physics

D.S.Government Degree College for Women,

Ongole R/o.H.No.7/2/5, Lawyerpet,

Prakasam District … PETITIONER

AND

The Commissioner & Director of

Collegiate Education, Andhra Pradesh

Hyderabad and another … RESPONDENTS

THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

-

WRIT PETITION No. 3780 OF 2005

ORDER: (per the Hon'ble Smt.Justice T.Meena Kumari)

This Writ Petition is filed by the petitioner-applicant to declare the action of

respondent No.2 in not releasing the monetary benefits with effect from 01.01.1996 to 21.09.1999 to him as per the orders dated 17.08.1999 of the Regional Joint Director of Higher Education, Guntur as illegal and consequently to direct the respondents to release the monetary benefits to him from 01.01.1996 to 21.09.1999 by setting aside the order dated 29.10.2002 in O.A.No.6788 of 2000 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad.

The above mentioned O.A. was filed by the petitioner to declare the action of the respondents in revising and refixing his pay vide letter dated 11.02.2000 purportedly on the basis of the proposals given by the Principal-second respondent without notice to him as illegal and arbitrary.

It is the case of the petitioner-applicant that he was originally appointed as Junior Lecturer on 04.02.1970 and that there were two types of Colleges, one Degree College and another Junior College. In Degree Colleges there were Lecturers, Assistant Lecturers, Demonstrators and Tutors whereas in Junior Colleges there were only Junior Lecturers. In the year 1976, the posts of Assistant Lecturers, Demonstrators and Tutors were abolished and only the post of Lecturer continues to exist and it has to be filled in the ratio of 1:3 viz., one by direct recruitment and three by appointment by transfer from the category of Junior Lecturer. The applicant is handling the post of Lecturer in Degree College from 1976 onwards and pursuant to a Judgment of the Tribunal, the applicant was considered and designated as Lecturer from the date he was handling the said post viz., 01.04.1976. While so, the Pay Revision Commission recommended scales of pay to the Principals and the Lecturers working in the Government Degree Colleges and it also recommended Special Grade and EPF scales on completion of 8 and 16 years of service. The applicant's pay fixation was verified by the Commissioner of Collegiate Education, Hyderabad and he issued proceedings dated 17.01.1996 fixing his pay with effect from 01.04.1976 in the scale of Rs.700-1600 with monetary benefit from 24.09.1992 and the period of service from 01.04.1976 was treated as notional service.

It is his further case that the Commissioner of Collegiate Education, Hyderabad issued proceedings dated 07.08.1999 fixing his pay with effect from 01.01.1986 and 01.04.1992 in Career Advancement Scheme with monetary benefits from 22.01.1999. The petitioner-applicant had been actually working from inception in the Degree College and was retrospectively appointed with effect from 01.04.1976 as Lecturer in Physics and completed eight years of service as on 01.01.1986 and 16

years of service as on 01.04.1992. Therefore, he is entitled for monetary benefit in Career Advancement Scheme. Since the applicant entered the scale of Rs.700-1600 with effect from 01.04.1976 and the revised pay scale of Rs.3000-5000 at Rs.3000/- plus Rs.40 EPF with effect from 01.01.1986, he is entitled to the monetary benefit also. However, he did not question the same because he had honoured the orders passed by the Commissioner.

While the matter stood thus, the Regional Joint Director of Higher Education, Guntur vide proceedings dated 17.08.1999 fixed his pay in the revised UGC Scales of pay 1996 at Rs.12420+40 with effect from 01.01.1996 and at Rs.14940 + 40 with effect from 01.04.1997. According to the petitioner-applicant any pay fixation is subject to audit and if the audit raises any objection, then the question of correcting the pay will arise. Instead of implementing the orders dated 17.08.1999, the Principal addressed a letter dated 27.10.1999 to the Commissioner of Collegiate Education, Hyderabad seeking clarification even though his pay fixation was approved by the competent authority-Regional Joint Director of Higher Education, Guntur as per the above said proceedings. On the ground that the Principal sought clarification, the pay fixation proposals received from the Principal were corrected and the applicant's pay was brought down from Rs.12420+40 to Rs.11300+40 with effect from 01.01.1996 vide letter dated 11.02.2000 of the Commissioner and Director of Collegiate Education without giving notice to the applicant. Arrears also were not paid to him whereas they have been paid to all the other Lecturers. Hence he filed the above O.A.

A counter-affidavit has been filed on behalf of respondent No.1 before the Tribunal stating that the applicant was appointed as Junior Lecturer in Physics on 04.02.1970 in the scale of Rs.200-500 at Government Junior College, Vinukonda, Guntur District and he worked upto 23.09.1982. He was promoted as Lecturer and posted to Government Degree College, Macherla, Guntur District by the proceedings of the Director dated 14.09.1982 and he joined duty on the forenoon of 24.09.1982. According to the respondents, the contention of the applicant that he is handling the post of Lecturer in the Degree College from 01.04.1976 onwards is not correct. It is stated that Lecturers and Assistant Lecturers working in the Degree Colleges are governed by one set of Service Rules known as A. P. Educational Service Rules with distinct and separate pay scales and the Junior Lecturers working in the Degree Colleges and the Junior Colleges are governed by the ad hoc Rules issued in G.O.Ms.No.939 dated 19.09.1973 which specifies that these Junior Lecturers

constitute a separate class in the A.P. Educational Subordinate Service. Obviously, keeping in view the nomenclature of the posts, the scale of pay attached to the posts and the fact that the Junior Lecturers are part of the Subordinate Service, Government in G.O.Ms.No.1072, Education, dated 26.11.1976 issued the following stipulation:

> "(d) In Government Degree Colleges with Intermediate Course, the posts of Junior Lecturers will be converted into Lecturers in the Revised Pay Scales, 1976. Taking into consideration the subject and the over all inter- se seniority of Junior Lecturers in that subject, the senior most Junior Lecturers will be promoted in conformity with the Presidential Order, to these posts of Lecturers under the Revised Pay Scale, 1976, after their work and performance are assessed by the Departmental Promotion Committee and if they are found fit and suitable."

As there was no recruitment to the post of Lecturers in Government Degree Colleges, with a view to see that the instructions in the Colleges does not suffer, the Government through Memo dated 22.11.1978 permitted the Director to fill up the vacant posts of Lecturers, Assistant Lecturers/Tutors/ Demonstrators existing in the Government Degree Colleges by posting Junior Lecturers in their own scale of pay purely on adhoc and temporary basis and without prejudice to their status as Junior Lecturers. As per the above orders of the Government, the Junior Lecturers in Government Degree Colleges in their own scale of pay to avoid dislocation of teaching work in Degree Colleges were posted as Lecturers. While doing so, the seniority of the Junior Lecturers was not taken into consideration and who ever readily available have been posted to Government Degree Colleges. In Government sector each college is not the unit for appointment but the zone is the unit for appointment. G.O.Ms.No.1072 dated 26.11.1976 could not be implemented in respect of all the Junior Lecturers posted in Government Degree Colleges, as the seniors happen to be working in Government Junior Colleges in the State D.A. merged scale of pay and juniors are working in Government Degree Colleges. It is so discriminatory if the applicant is allowed the UGC scale of 1976 in preference to his seniors working in Government Junior Colleges.

The Tribunal in its judgment dated 2.7.1993 in O.A.No.1705 of 1987 held that the applicants therein as Junior Lecturers in Degree Colleges are not entitled for a direction to grant them the UGC pay scales (RPS, 1976) as a matter of right simply

because they happen to work in Degree Colleges, without complying with the requirements laid down in law and the instructions issued in G.O.Ms.No.1072, dated 26.11.1976 or irrespective of the seniority in the category of Junior Lecturers and without being processed by the DPC and accordingly directed the respondents to conduct the exercise contemplated in G.O.Ms.No.1072 dated 26.11.1976 as expeditiously as possible. The Government in G.O.Ms.No.28, dated 22.01.1999 issued the following orders:

1. A total of 228 posts of Junior Lecturers be upgraded as Lecturers in terms of G.O.Ms.No.1072, Education dated 26.11.1976. All the 228 Junior Lecturers who were promoted as Lecturers in the year 1981 be given 1.4.1976 as the date of their promotion.
2. In the year 1981 a total of 590 Junior Lecturers were promoted. After taking out 228, there will be balance of 362 for whom the date of promotion be given from 1.4.1977.
3. 223 Junior Lecturers were promoted in the year, 1982. Half of this number i.e., 112 be given their date of promotion as 1.4.1978.

Further, it was ordered that all the promotions shall be notional in nature and monetary benefit shall accrue from the date of issuance of orders and notional promotion period shall be counted for Career Advancement Scheme.

In pursuance of the orders issued in G.O.Ms.No.28, dated 22.01.1999 and under Rule 109 (a) of A.P. State and Subordinate Service Rules, 1996, the applicant was given notional promotion with effect from 01.04.1976 in the scale of Rs.700-1600 subject to certain conditions. One of the conditions is that the promotion shall be notional in nature and monetary benefit shall accrue from the date of issuance of the G.O. i.e., 22.01.1999.

Accordingly, the pay of the applicant has been fixed in the RPS 1976, 1986 and 1996 on notional basis for which the applicant is entitled and the monetary benefit was allowed from 22.01.1999 as per G.O.Ms.No.28, dated 22.01.1999 and was communicated through Commissioner of Collegiate Education, Hyderabad vide proceedings dated 7.8.1999. The Regional Joint Director of Higher Education, Guntur in his proceedings dated 17.8.1999 has erroneously fixed the pay of the

applicant by taking into account the notional service without indicating the date of monetary benefit. As per G.O.Ms.No.28, the monetary benefit should be allowed only from the date of issuance of the G.O. i.e. 22.01.1999. The applicant has not been given notice for re-fixation of his pay because in the fixation proceedings certain conditions were there and the first condition is that if any excess amount is paid due to erroneous fixation of pay, the same will be recovered from the Lecturer as and when it comes to light. There are, therefore, no merits in the OA and the same is liable to be dismissed.

The Tribunal after hearing both the sides and after perusing the material on record dismissed the O.A. Hence, the present Writ Petition.

Heard the learned counsel.

Learned counsel for the petitioner has contended that the respondents have not released the monetary benefits to the petitioner w.e.f.,1.1.1996 to 21.1.1999 as per the orders dated 17.8.1999 of the Regional Joint Director of Higher Education, Guntur for which the petitioner is entitled to.

Pursuant to the orders issued in G.O.Ms.No.28, dated 22.01.1999, the applicant was given notional promotion with effect from 01.04.1976 in the scale of Rs.700-1600 subject to certain conditions and one of the conditions is that the promotion shall be notional in nature and monetary benefit shall accrue from the date of issuance of the G.O. i.e., 22.01.1999. As per G.O.Ms.No.28, the monetary benefit should be allowed only from the date of issuance of the G.O. i.e. 22.01.1999.

Under the above circumstances, we do not find any reason to interfere with the order of the Tribunal and therefore, the writ petition is dismissed.

(T.MEENA KUMARI,J)

(P.LAKSHMANA REDDY,J)

Dt.14.09.2005

bsv/lvl